

REMARKS

Applicant has carefully reviewed the Application in light of the Final Office Action mailed November 12, 2008. At the time of the Office Action, Claims 1-43 were pending in the Application and stand rejected. Applicant amends several Independent Claims without prejudice or disclaimer. The amendments to these claims are not the result of any Prior Art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Specification

The Examiner objects to the Specification as failing to provide proper antecedent basis for the claimed subject matter. Applicant has made a modest amendment to address the Examiner's concern.

Section 102 Rejection

The Examiner rejects Claims 1-3, 5-10, 13-19, 22-27, 29, 31, 33, 36-38, 40 and 43 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,699,513 issued to Feigen et al. (hereinafter "*Feigen*"). The Examiner further rejects Claims 17-19, 21-22, 25-28, 36-38 and 40-43 as being anticipated by U.S. Patent No. 6,442, 686 issued to McArdle et al. (hereinafter "*McArdle*"). This rejection is respectfully traversed for the following reasons.

Independent Claim 1 is Allowable over Feigen

Applicant respectfully reminds the Examiner that a claim is anticipated only if each element as set forth in the claim is either found, expressly or inherently described, in a single

prior art reference.¹ In addition, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claims” and “[t]he elements must be arranged as required by the claim.”² In regard to inherency of a reference, “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.”³ Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.⁴

Independent Claim 1, as amended, recites “*...determining whether one or more usage conditions are met, wherein if at least one of the conditions is not met, then the connection request is not sent to the server, and wherein the conditions that would permit the connection request to be sent include a persistent usage condition in which a client to server conduit was previously authorized and a designated time interval for the persistent usage condition has not lapsed.*”

No reference actually discloses conditions that would permit the connection request to be sent, and those conditions including: a persistent usage condition in which a client to server conduit was ***previously authorized*** and a designated time interval for the persistent usage condition has not lapsed. First, there is nothing in the cited references for this persistent usage. Second, there is nothing associated with a time interval: much less a time interval being the trigger for whether to permit the connection request to be sent. At the passages cited by the Examiner (Column 8: lines 66-67 of *Feigen*) for potentially relevant discussions related to these limitations, there is simply nothing that discloses such capabilities. Again, these important limitations are provided for in Independent Claim 1, but no reference of record includes such

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

² *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

³ MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

⁴ MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

elements. Applicant has reviewed the cited references in their respective entireties and finds nothing that would be relevant to such operations.

The other Independent Claims recite limitations similar, but not identical, to these limitations and, therefore, are allowable using a similar rationale. Additionally, the corresponding dependent claims from these Independent Claims are also patentably distinct for analogous reasons.

Section 103 Rejection

The Examiner rejects Claims 20, 23-24 and 39 under 35 U.S.C. §103(a) as being unpatentable over *McArdle* in view of U.S. Publication No. 2003/0120811 issued to Hanson et al. (hereinafter "*Hanson*"). The Examiner further rejects Claims 4, 20, 32 and 39 as being unpatentable over *Feigen* in view of *Hanson*. The Examiner further rejects Claims 11-12 and 30 under *Feigen* in view of U.S. Patent No. 6,587,877 issued to Douglass et al. (hereinafter "*Douglass*"). The Examiner further rejects Claims 34-35 and 41-42 under *Feigen*.

Applicant respectfully reminds the Examiner that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior reference (or references when combined) must teach or suggest all of the claim limitations.⁵

It is respectfully submitted that the rejected claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each claim limitation of the Independent Claims. This has been evaluated extensively in the §102 analysis provided above. For at least these reasons, all of the pending claims have been shown to be allowable as they are patentable over the

⁵ See M.P.E.P. §2142-43.

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references of record. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

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CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

The Request for Continued Examination fee for \$810 is being paid concurrently herewith via the Electronic Filing System (EFS) by way of Deposit Account No. 50-4889 authorization. No additional fees are believed due. However, please apply any other charges or credit any overpayment to Deposit Account No. 50-4889 of PATENT CAPITAL GROUP, referencing the attorney docket number referenced above.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214-823-1241.

Respectfully submitted,

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